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8

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SANDRA S. YBARRA,) Case No. 08cv0350 JAH(RBB)
12)
Plaintiff,)
13) **ANSWER TO COMPLAINT**
v.)
14)
UNITED STATES OF AMERICA,)
15)
Defendant.)
16)

17 COMES NOW Defendant, the United States of America, by and
18 through its attorneys, Karen P. Hewitt, United States Attorney and
19 Melanie A. Andrews, Special Assistant United States Attorney, and
20 for its Answer to Plaintiff's Complaint sets forth the following:

21 1. Answering Paragraph 1 of the Complaint, Defendant states
22 that the allegations contained therein are legal conclusions solely
23 within the purview of the court and for its determination, and no
24 answer is therefore required. To the extent an answer is required,
25 said allegations are denied.

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1 2. Answering the first sentence of Paragraph 2 of the
2 Complaint, Defendant admits the substantial truth of the allegations
3 contained therein. Answering the second sentence of Paragraph 2 of
4 the Complaint, Defendant denies all of the allegations contained
5 therein.

6 3. Answering Paragraph 3 of the Complaint, Defendant states
7 that the allegation concerning jurisdiction contained therein is a
8 legal conclusion solely within the purview of the court and for its
9 determination, and no answer is therefore required. To the extent an
10 answer is required, said allegations are denied.

11 4. Answering Paragraph 4 of the Complaint, Defendant states
12 that the allegation concerning venue contained therein is a legal
13 conclusion solely within the purview of the court and for its
14 determination, and no answer is therefore required. To the extent an
15 answer is required, said allegations are denied.

16 5. Answering Paragraph 5 of the Complaint, Defendant admits
17 the substantial truth of the allegations contained therein.

18 6. Answering Paragraph 6 of the Complaint, Defendant admits
19 the substantial truth of the allegations contained therein.

20 7. Answering Paragraph 7 of the Complaint, Defendant admits
21 that on or about April 23, 2007, Plaintiff submitted an administrative
22 claim to the Department of the Navy in the amount of \$150,000.00.
23 Except as specifically admitted, Defendant denies, generally and
24 specifically, each, all and every remaining allegation in said
25 paragraph.

26 8. Answering Paragraph 8 of the Complaint, Defendant admits
27 the substantial truth of the allegations contained therein.

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1 9. Answering Paragraph 9 of the Complaint, Defendant denies
2 all of the allegations contained therein.

3 10. Answering Paragraph 10 of the Complaint, Defendant admits
4 that Building 3187 at 2260 Callagan Highway, San Diego, California,
5 is a government facility operated by the United States Navy which is
6 an agency or instrumentality of the United States of America. Except
7 as specifically admitted, Defendant denies, generally and
8 specifically, each, all and every remaining allegation in said
9 paragraph.

10 11. Answering Paragraph 11 of the Complaint, Defendant admits
11 that on or about 5:00pm on or about May 3, 2007 Plaintiff was located
12 in Building 3187 at 2260 Callagan Highway, San Diego, California.
13 Except as specifically admitted, Defendant denies, generally and
14 specifically, each, all and every remaining allegation in said
15 paragraph.

16 12. Answering Paragraph 12 of the Complaint, Defendant denies
17 all of the allegations contained therein.

18 13. Answering the first sentence in Paragraph 13 of the
19 Complaint, Defendant denies all of the allegations contained therein.
20 Answering the second sentence in Paragraph 13 of the Complaint,
21 Defendant states that no answer is required to said sentence inasmuch
22 as there are no charging allegations directed to this answering
23 Defendant. To the extent an answer is required, Defendant denies said
24 allegations. Answering the last sentence in Paragraph 13 of the
25 Complaint, Defendant states that it is without knowledge or
26 information sufficient to form a belief as to the truth of the
27 allegations therein contained, and based thereon, denies generally and
28 specifically each, all and every allegation contained therein.

1 14. Answering the first sentence in Paragraph 14 of the
2 Complaint, Defendant denies all of the allegations contained therein.
3 Answering the last sentence in Paragraph 14 of the Complaint,
4 Defendant states that no answer is required to said paragraph inasmuch
5 as there are no charging allegations directed to this answering
6 Defendant. To the extent an answer is required, Defendant denies said
7 allegations.

8 15. Answering Paragraph 15 of the Complaint, Defendant denies
9 all of the allegations contained therein.

10 16. Answering Paragraph 16 of the Complaint, Defendant denies
11 all of the allegations contained therein.

12 17. Answering Paragraph 17 of the Complaint, Defendant denies
13 all of the allegations contained therein.

14 18. Answering Paragraph 18 of the Complaint, Defendant denies
15 all of the allegations contained therein.

16 19. Answering Paragraph 19 of the Complaint, Defendant states
17 that the allegations contained therein are legal conclusions solely
18 within the purview of the court and for its determination, and no
19 answer is therefore required. To the extent an answer is required,
20 said allegations are denied.

21 20. Answering Paragraph 20 of the Complaint, Defendant denies
22 all of the allegations contained therein.

23 Defendant denies all other allegations of Plaintiff's Complaint
24 not specifically admitted.

25
26 **AFFIRMATIVE AND OTHER DEFENSES**

27 1. The Court lacks jurisdiction over the subject matter of this
28 action.

1 2. The Complaint fails to state a claim upon which relief can
2 be granted to the Plaintiff against the Defendant under the Federal
3 Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-80, as averred in
4 the Complaint or otherwise, for the reason that if said Defendant were
5 a private person, it would not be liable to Plaintiff in accordance
6 with the law of the State of California.

7 3. Plaintiff cannot recover for any injury or injuries caused
8 in whole or in part by and through her own carelessness, negligence,
9 or assumption of the risk.

10 4. To the extent the acts or omissions of others were the sole
11 proximate causes of any injury, damage, or loss to the Plaintiff,
12 those acts and omissions have superseded any acts or omissions of
13 Defendant.

14 5. Plaintiff cannot recover damages from Defendant for any
15 injuries that were not proximately caused by a negligent or wrongful
16 act or omission on the part of Defendant or any employee or agent of
17 Defendant.

18 6. There was no negligent act or omission on the part of any
19 federal employee.

20 7. Defendant asserts, as an affirmative defense, California
21 Civil Code, § 1431.2(a), which provides:

22 In any action for personal injury, property damage, or
23 wrongful death, based upon principles of comparative fault,
24 the liability of each defendant for non-economic damages
25 shall be several only and shall not be joint. Each
26 defendant shall be liable only for the amount of non-
economic damages allocated to that defendant in direct
proportion to that defendant's percentage of fault, and a
separate judgment shall be rendered against that defendant
for that amount.

27 8. To the extent Plaintiff failed to exercise reasonable care
28 in mitigating her damages, her claim must be barred or diminished.

1 9. Plaintiff's recovery, if any, is limited to the amount of
2 the claim the Plaintiff presented administratively. See 28 U.S.C.
3 § 2675(b).

4 10. To the extent Plaintiff has alleged speculative future
5 damages, they do not constitute compensable damages.

6 11. All future damages, if any, must be reduced to present
7 value.

8 12. Income taxes must be deducted from Plaintiff's alleged past
9 and future lost earnings, if any.

10 13. In the event Defendant is found liable, which Defendant
11 expressly denies, Defendant is entitled to an offset against damages,
12 if any, for all amounts received by Plaintiff from the United States
13 of America and its agencies, by reason of Plaintiff's alleged
14 injuries.

15 14. Plaintiff is not entitled to trial by jury in an action
16 brought under the Federal Tort Claims Act. See 28 U.S.C. § 2402.

17 WHEREFORE, Defendant prays that Plaintiff takes nothing by reason
18 of her suit herein, that judgment be rendered in favor of said
19 Defendant, for costs of suit herein incurred, and for such other and
20 further relief as this Court may deem proper.

21
22 DATED: April 22, 2008

KAREN P. HEWITT
United States Attorney

23
24 /s/Melanie A. Andrews
25 MELANIE A. ANDREWS
26 Special Assistant U.S. Attorney

27 Attorneys for the Defendant
28 United States of America
 Email: Melanie.Andrews@usdoj.gov